

# *Law and mental competency in late medieval England*

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## Law and Mental Competency in Late Medieval England<sup>1</sup>

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In 1839, John Elliotson, a phrenologist, mesmerist, Dean of the Faculty of Medicine at University College London, and then President of the Royal Medical and Chirurgical Society, lamented what he saw as an unfortunate tendency amongst his colleagues in the psychiatric profession: they had largely adopted an understanding of idiocy that originated in English law. At the root of Elliotson's discontent was the fact that the law's requirements for idiocy did not conform to the reality witnessed in his clinical practice. For the law held:

The individual, in order to be constituted an idiot, must be unable to number to twenty, or to tell his age, or to answer any common question; by which it may plainly appear, that the person has not reason sufficient to discern what is for his advantage or disadvantage.<sup>2</sup>

Yet Elliotson had found that idiots could often differentiate between numbers, size, distance, and even count above twenty, 'notwithstanding what the law says'. Meanwhile other people could 'never be made to calculate; and some persons can scarcely keep their own accounts, though otherwise they are reflecting and very clear-headed persons'.<sup>3</sup>

Ironically, given his concern that psychiatry be preserved from outside influence, around the time his thoughts on idiocy appeared in print, Elliotson was forced to give up his offices at University College London and the University College Hospital due to his excessive enthusiasm for mesmerism and other practices which his colleagues rejected as pseudo-science.<sup>4</sup> In highlighting the dissonance between legal and medical understandings of mental incompetence, however, Elliotson was on to something. For, unbeknownst to him, the criteria to which he so objected were not invented by modern jurists seeking to

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- 1 I would like to thank Duane Corpi, Sarah Harlan-Haughey, Tom McSweeney, Melissa Winders, and of course, Paul Hyams, for their comments on earlier versions of this essay. I am also grateful to Mansfield College, University of Oxford, for providing a congenial place to work during the Fall of 2013.
  - 2 John Elliotson, MD, Cantab.; FRS, *The Principles and Practice of Medicine; Founded on the Most Extensive Experience in Public Hospitals and Private Practice; and Developed in a Course of Lectures Delivered at University College, London* (London: Joseph Butler, 1839), p. 599. Elliotson's discussion here echoed a paper he read years earlier at the meeting of the London Phrenological Society. In 1824, a summary of the meeting in the medical journal *The Lancet* noted that Elliotson had 'read an interesting paper on idiocy and Insanity; in which he showed that the definition of idiocy, as sanctioned by the law, to be incorrect'. *The Lancet London: A Journal of British and Foreign Medicine*, 5 (1824): 207.
  - 3 Elliotson, *Principles and Practice of Medicine*, p. 599.
  - 4 Alison Winter, *Mesmerized: Powers of Mind in Victorian Britain* (Chicago: University of Chicago Press, 1998), p. 59.

accurately describe a well understood medical condition. Instead, they first emerged in mental competency inquisitions held in England during the later Middle Ages, centuries before a concept of intellectual disability even existed in medical thought!<sup>5</sup>

Between the late thirteenth century and 1540, when Henry VIII established the Court of Wards and Liveries, the English royal courts oversaw hundreds of inquisitions involving individuals thought to be idiots or 'natural fools'.<sup>6</sup> In these inquisitions, officials acting on behalf of the Crown asked alleged idiots, their friends, and their families, questions to determine whether they possessed enough reason to manage their own affairs, and if not whether they had lacked it from birth. If the latter was found to be the case, the individuals in question lost all the rights associated with legal adulthood — the ability to possess or sell property, make contracts, marry, and testify in court.<sup>7</sup> The Crown then seized their property, and sold their wardships — the right to manage and profit from their land, paired with the responsibility for their care — to people outside their immediate families.<sup>8</sup> It is worth noting that these were often the same people who had brought the alleged idiot's condition to the Crown's attention in the first place.

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- 5 The English anatomist Thomas Willis' *Two Discourses Concerning the Soul of Brutes, Which is that of the Vital and Sensitive of Man* (1672), is often identified as the first systematic treatise on intellectual impairment. Since intellectual impairment did not feature prominently in medical writing prior to this time, a number of books and articles have suggested that it was not construed as a distinct medical disorder until the seventeenth century. See for instance, C. F. Goodey, *A History of Intelligence and 'Intellectual Disability': The Shaping of Psychology in Early Modern Europe* (Aldershot: Ashgate, 2011).
  - 6 I use the term 'royal courts' here to reflect the fact that officials from a variety of royal offices had a role in administering idiocy inquisitions and the land transfers that resulted from them. By the second quarter of the fourteenth century however, most inquisitions involving alleged idiots fell under the jurisdiction of Chancery, which developed during this same period into a 'court of conscience', focused on issues of equity and natural law.
  - 7 It was important to discover whether the individuals had lacked reason from birth, because the law granted the Crown different rights over the lands of idiots and the insane or *non compos mentis*, and used idiocy's status as a congenital disorder to differentiate between these two groups of people. For instance, Sections 11 and 12 of the *Prerogativa Regis*, a summary of the monarch's customary rights and privileges, held that 'the king shall have custody of the lands of natural fools taking of them without waste or destruction'. On the other hand, 'when any that before time hath his wit and memory happened to fail of his wit, as there are many *per lucida intervalla*, that their lands and tenements shall be kept safely without waste and destruction [...] and the king shall take nothing to his own use': *The Statutes of the Realm: Printed by Command of His Majesty King George the Third. In Pursuance of an Address of the House of Commons of Great Britain. From Original Records and Authentic Manuscripts ...*, ed. by Alexander Luders, Sir Thomas Edlyne Tomlins, et al. (London: George Eyre and Andrew Strahan for the Record Commission, 1810–1822), i, p. 226.
  - 8 *Fleta* suggests that this practice stemmed from the fact that when idiots were entrusted to their families, 'people were suffering disinheritation from this custom, [and] it was provided by common consent that the king should obtain perpetual custody of the lands and bodies of these kinds of idiots and fools': *Fleta*, Book I, Ch. 11. a. 10, cited in John Shapland Stock, *A Practical Treatise Concerning the Law of Non Compos Mentis, or Persons of Unsound Mind* (London: Saunders and Benning, 1838), p. 81. In practice however, the Crown profited handily from its sale of wardships.

Though separated by hundreds of years, these developments are directly related to Elliotson's complaint, because by the late fourteenth century the questions the courts asked when evaluating alleged idiots look remarkably similar to those used by nineteenth-century jurists and psychiatrists.<sup>9</sup> When the royal courts first began to oversee inquisitions involving alleged idiots, the officials charged with assessing their conditions asked questions that reflected a definition of idiocy devised by thirteenth-century jurists. Specifically, accepting that idiocy differed from insanity only in that it was congenital and permanent, they simply sought to determine whether the individuals in question had been afflicted with their conditions from birth, and whether they had ever possessed lucid intervals — a characteristic used to demarcate insanity from idiocy in contemporary legal writing.<sup>10</sup> By the end of the fourteenth century however, more specific criteria had begun to emerge for determining whether someone was an idiot. Rather than simply inquiring whether alleged idiots had ever possessed reason, royal officials began to ask them to identify the value of coins, do simple arithmetic, and even measure cloth — tasks designed to gauge their ability to participate in an increasingly commercialized economy.

For instance, in July of 1383, a woman named Emma de Beston was brought before a jury at the Church of St Benedict in Lincoln to determine whether she was an idiot. During her inquisition, she was asked, among other things, whether she had ever been married, her age, what day of the month the past Friday had fallen upon, how many days there were in a week, and perhaps most interestingly 'how many shillings were in forty pence and whether she would rather have twenty silver groats than forty pence'. Failing to provide satisfactory answers to these questions, the jury found that Emma had 'neither sense nor memory, nor sufficient intelligence to manage herself, her lands, or her goods', as well as 'the face and countenance of an idiot', and entrusted her person and property to the custody of her uncle, Philip Wyth.<sup>11</sup>

The records documenting Emma's interactions with the royal courts are uncharacteristically detailed, as those of most thirteenth- and fourteenth-century mental competency inquisitions say little about the procedure through which the courts reached

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9 This point was first made in Richard Neugebauer, 'Mental Handicap in Medieval and Early Modern England; Criteria, Measurement, and Care', in *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities*, ed. by Anne Digby and David Wright (New York: Routledge, 1996), pp. 22-43.

10 See note 6 above.

11 TNA, C145/228/10. A summary is published in *Calendar of Inquisitions Miscellaneous (Chancery) Preserved in the Public Record Office, Vol. IV, 1377-1388* (London: HMSO, 1957), pp. 125-8. (Henceforth, *CIM*).

their verdicts.<sup>12</sup> As a result, it is impossible to know whether the questions the jury asked Emma were used beyond her hearing, but, nevertheless, we know that they eventually became commonplace, because they endured in legal thought and practice centuries after the Middle Ages had ended. For example, a legal dictionary dating from 1527 described an idiot as someone:

who knoweth not to accompt of number 20 pence [...] has no manner of understanding of reason, nor gouvernement of himself, what is for his profit or disprofit, etc. But if hee have soe much knowledge he can reade, or lerne to reade by instruction and informatyon of others, or can measure an elle of cloth, or name the daies of the week, or begette a childe, sonne or daughter, or such lyke, whereby it may appere that he hath some light of reason, then such a one is noe Ideot naturallye.<sup>13</sup>

Note that many of the criteria articulated here are the same as those used in both Emma's inquisition more than a century earlier, and cited in Elliotson's complaint more than four centuries later. Indeed, during Elliotson's time, the legal criteria for idiocy still reflected a definition that Anthony Fitzherbert had put forth in *La Novelle Natura Brevium* in 1534, which itself echoed procedure that originated in fourteenth-century juridical practice. For instance, a treatise on idiocy written by a barrister of the Middle Temple in 1833 cited Fitzherbert's claim that an idiot 'cannot count or number twenty pence, nor tell who was his father or mother, nor how old he is, &c, so as it may appear that he hath no understanding or reason what shall be for his profit, or what for his loss'.<sup>14</sup>

How can we explain these affinities? The precedential nature of the Common Law aside, previous scholarship has taken the fact that the criteria used to assess Emma's mental state endured for so long as evidence that medieval responses to mental disorder were more rational and humane than commonly assumed. Citing Emma's inquisition for instance,

12 For this reason, Emma has attracted the attention of other scholars, who have used the records relating to her inquisition as a source for the broader history of mental disorder. See, Wendy J. Turner, 'Town and Country: A Comparison of the Treatment of the Mentally Disabled in Late Medieval English Common Law and Chartered Boroughs', in *Madness in Medieval Law and Custom*, ed. by Turner (Leiden: Brill, 2010), pp. 17-38, and D. Roffe and C. Roffe, 'Madness and Care in the Community: A Medieval Perspective', *The British Medical Journal*, 311 (1995): 1708-12.

13 John Rastell, *An Exposition Of Certaine Difficult And Obscure Words, And Termes Of The Lawes Of This Realme: Newly Set Foorth & Augmented, Both in French and ... Desirous to Attaine the Knowledge of the Same* (originally written in French, but first published in English in 1527), quoted in Patrick McDonagh, *Idiocy: A Cultural History* (Liverpool: Liverpool University Press, 2008), p. 86.

14 Leonard Shelford, esq. of the Middle Temple, Barrister at Law, *A Practical Treatise on the Law Concerning Lunatics, Idiots, and Persons of Unsound Mind: With an Appendix of the Statutes of England, Ireland, and Scotland, Relating to Such Persons: And Precedents and Bills of Costs* (London: S. Sweet, and Stevens & Sons, 1833), p. 3.

Richard Neugebauer has suggested that examinations administered by the Court of Wards during the seventeenth century which seem 'remarkably modern in method and tone', relied on a procedural format that had been in place since the Middle Ages, 'rather than announcing the enlightened perspective of a new age'.<sup>15</sup> In a similar vein, David Roffe has characterized the approach taken in Emma's inquisition as 'commonsense, pragmatic', noting that the questions she was asked, 'were carefully tailored to her experience and circumstances' and 'linked to memory tests, simple skills, and general knowledge'.<sup>16</sup> Finally, Wendy Turner has used Emma's inquisition to explore the tensions which could arise between the Crown and free boroughs when the royal courts extended their jurisdiction to legal disputes involving the Crown's mentally incompetent subjects. Taking a positive view of this expansion of royal authority, Turner interprets Emma's case as an example of how the Crown could protect its mentally ill subjects when corrupt members of their community sought to take advantage of their conditions.<sup>17</sup>

In other words, previous analyses of Emma's inquisitions have suggested that any affinities that exist between the questions Emma was asked in the late fourteenth century, and those used to evaluate potential idiots centuries later, extend from the fact that the medieval royal courts were far ahead of their time. They had devised a way to rationally and accurately measure a trans-historical medical reality, which needed little improvement as the centuries wore on. Yet as Elliotson suggested, these criteria never quite described intellectual disability, as medical practitioners understood it. Moreover, if we look closely at the process through which the courts determined that Emma was an idiot, a far murkier picture emerges. The persistence of the criteria used to assess Emma's mental state did not reflect any special rationality in the medieval courts. Instead, their remarkable longevity speaks to the law's power to not only reflect social facts, but also create them.

Paul Hyams is one of those exceptional historians whose work not only speaks to other scholars of English law, but exemplifies how the law can be used to illuminate broader cultural developments, and it was thus with Paul's advice that I came to see law as an invaluable source for cultural historians. Emma's inquisition seemed a fitting point of focus for my contribution to his festschrift, because the connections it brings to light between fourteenth-century legal developments and later legal and medical understandings

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15 Neugebauer, 'Mental Handicap in Medieval and Early Modern England', pp. 28-29.

16 David Roffe, 'Perceptions of Insanity in Medieval England', *Haskins Society Japan*, 5 (2013): 29. David and Christine Roffe have also used Emma's case to argue that truly public provisions existed for the care of the mentally impaired during the Middle Ages, and that as a result Emma might have fared better than she would today, when 'ultimate decisions [about a subject's care] rest with the experts, and it is not always possible to associate the local community with the settlement reached'. (D. Roffe and C. Roffe, 'Madness and Care in the Community', p. 1712.)

17 Turner, 'Town and Country', pp. 17-38.

of intellectual disability point to one of the stranger ways that medieval law shaped culture beyond the courtroom. To see this, let us consider the events leading up to Emma's hearing in Lincoln in July of 1383.

#### The Curious Case of Emma de Beston

Emma was found to be an idiot in July of 1383; however, she first came to the Crown's attention in May of the previous year, after her uncle Philip Wyth requested that the Crown appoint him as her guardian. Shortly afterwards John Rede, the escheator of Norfolk, had gone to the borough of Bishop's Lynn to carry out an inquisition into Emma's mental state at the order of the King's Chancellor. At this time, he found that while Emma had 'not been an idiot from birth', she had become one four years prior, when her reason was 'snatched by the snares of evil spirits', to the extent that she 'lacked lucid intervals altogether'.<sup>18</sup> Having determined that Emma was unable to care for herself or her property, the Crown then entrusted her land and goods, which consisted of relatively modest holdings of a tenement in Jeweslane worth an estimated two marks yearly, a messuage in Websterwe worth twenty shillings yearly, plus a tenement in Wyngate worth twenty shillings yearly, to her uncle for as long as she remained impaired.<sup>19</sup>

Emma however resisted the escheator's verdict. When the time came to deliver her into Philip's custody, the escheator found her house vacant, the doors locked, and Emma nowhere in sight. The escheator noted that he believed that the residents of the town were harboring Emma, but no one in Bishop's Lynn — including Henry Betle, the town's mayor — would reveal to him where she was or whom she was with. In fact, the escheator claimed that Henry Betle had warned Lawrence de Elyngham, with whom Emma allegedly lived, of his arrival so that he could hide her. The escheator thus left with his mission unaccomplished. Emma was safe for now, but her entanglement with Philip, the escheator, and the royal Chancery was only just beginning.

A petition sent to the court on Emma's behalf shortly thereafter claimed that she had hidden because Philip had only sought to have her declared incompetent so he could use her goods to pay off debts owed to his business partners and Emma herself. The petition described Philip's debts as so large that 'he had not means of payment out of his goods, but only out of hers, whereby she is like to be brought to naught and her goods wasted and destroyed'.<sup>20</sup> It further claimed that Philip had promised the escheator part of Emma's goods in exchange for finding her incompetent. While local records from Lynn neither

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18 TNA, C66/316/36.

19 TNA, C66/316/36.

20 TNA, C66/314/28. A summary can be found in *CIM*, vol. 4, pp. 125-128 (citation at p. 127) and *Calendar of the Patent Rolls. Richard II. Vol. 2: A.D. 1381-1385* (London: HMSO, 1897), p. 212. [Hereafter CPR]



confirm nor deny this claim, entries recorded in the *Red Register of King's Lynn*, a contemporary collection of local records kept by the merchants' guild, support the assertions about Philip's debt, and suggest that he was already disliked by his community at the time the inquisition took place.<sup>21</sup> Furthermore, Letters Patent issued on 10 August 1383, only a month after Philip had acquired Emma's wardship, noted that he had 'sued out of the said custody in his own relief to pay his own debts'.<sup>22</sup>

Let us pause here for a moment before continuing with Emma's story. Emma's case is fascinating, not only because it provides one of the most detailed accounts of a medieval mental competency hearing, but also because it illuminates the tensions that could emerge between Crown and town over the jurisdiction of its mentally incompetent subjects, the relationships between alleged idiots and their would-be guardians, and how the people who were the subject of these hearings may have responded to the Crown's intrusion into their affairs. More broadly, it demonstrates that the process through which the royal courts reached decisions about alleged idiots' competency was by no means straightforward. For Emma's rejection of the escheator's verdict, her allegations that he had colluded with Philip, and her assertion that Philip's intentions were less than honorable, stand in stark contrast to the positive picture of the procedural format of these hearings and the custody arrangements that resulted from them presented in previous analyses of the case. Moreover, while Emma's inquisition is certainly extraordinary, she was by no means the only person to resist a verdict of mental incompetency handed down by the Crown.

While the Crown's claim to the lands of idiots ostensibly stemmed from the need to prevent them from alienating their estates to the detriment of their heirs, its right to sell and profit from their wardships presented a powerful new means through which land could be redistributed. As a result, people in late-medieval England had a variety of reasons to accuse their relatives and neighbors of idiocy other than concern for their wellbeing, and many alleged idiots were found to be of sound mind upon re-examination. For instance, on 7 July 1402, Chancery ordered the escheator of Gloucestershire to 'remove the king's hand and meddle no further', into the affairs or property of William de Aston, who was accused of idiocy 'in a malicious suit of certain enemies', but found to be 'of sound mind and discretion', when examined in person at Chancery.<sup>23</sup> Likewise, in 1390 the Crown revoked Letters Patent granting the lands and tenements of Ralph Beville, an idiot, to Thomas

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21 The inquisition seems to have made matters worse for him. On 15 March 1384 Philip was fined 66s. 8d. 'as much for his disobedience as for divers trespasses committed by him against the mayor and commonality'. Lynn's antipathy towards him may have had something to do with the fact that he had been briefly employed as a tax collector for the Crown a few years earlier, at a time when tensions between the Crown and Lynn were at an all time high due to increased demands for taxation. Holcombe Ingleby, ed., *The Red Register of King's Lynn*, trans. by R. F. Isaacson (King's Lynn: Thew & Son, 1919-22), ii, pp. 20, 211.

22 TNA, C66/314/28. A summary can be found in *CPR 1381-1385*, p. 305.



Alnewyk, a serjeant of the Butlery, after discovering that Thomas had deliberately misrepresented Ralph's condition to the Crown in the previous year to gain access to his estate.<sup>24</sup>

The officials who oversaw idiocy inquisitions could also be swayed to side with alleged idiots' accusers when the Crown wished to use their land to reward its favored servants or enrich its coffers. For instance, in 1301, Adam le Gayt, the king's former nightwatchman, requested that the Crown examine William Berchaund on suspicion of idiocy, and grant him his wardship if he was found incompetent. Adam had previously held the wardship of William's uncle John Danthorp, also an idiot, and he now requested that the Crown grant him William's wardship as well, on the grounds that 'what he had of his uncle, the other fool, had been loyally expended in the king's service, and he cannot otherwise maintain his estate'.<sup>25</sup>

Perhaps on account of the Crown's fondness for Adam, the escheator charged with examining William found that he was an idiot. Nevertheless, he noted that he had heard upon making inquiries to William's neighbors that William 'at lunations is worse and is vacant with savage madness'.<sup>26</sup> This language echoes that used in contemporary inquisitions to describe criminal insanity rather than idiocy. For example, around the time of Berchaund's inquisition, William Gray was pardoned for the death of Walter Scot on the grounds that he had killed him in a fit of *furore*.<sup>27</sup> Likewise, the claim that William's condition deteriorated with 'lunations', reflected the belief that madness was connected to the lunar cycle.<sup>28</sup>

23 *Calendar of the Close Rolls. Henry IV. Vol. 1: 1399-1402* (London: HMSO, 1927), p. 543. (henceforth, CCR)

24 *CCR Richard II. Vol. 4: 1389-1392* (London: HMSO, 1922), pp. 232, 290.

25 TNA, C133/106/17. A summary can be found in the *Calendar of Inquisitions Post Mortem and Other Analogous Documents Preserved in the Public Record Office. Vol. 4, 29-35 Edward I* (London: HMSO, 1913), pp. 78-79 (henceforth CIPM). Adam truly was in dire straits when he made this request. For he had lived in a small house on Danthorp's estate while he held his wardship. When Danthorp had died a year earlier however, his lands had passed to William, and Adam was forced to vacate the premises. Having no lands of his own, he was then reduced to relying upon charity from the Church. For shortly after Danthorp's death, the king had sent a letter to the Abbot of Croyland, requesting that he take Adam, 'who had long and faithfully served the king', into his house, and 'grant him all the necessities required for the rest of his life': *CPR Preserved in the Public Record Office. 6, A.D. 1266-1272* (London: HMSO, 1913), p. 54.

26 *aliquando per lunaciones deterius se habet et crudelis furore vacatur: CPR Edward I.; 3, A.D. 1292 - 1301* (London: HMSO, 1895), p. 123.

27 *CPR Edward I.; 4, A.D. 1301-1307* (London: HMSO, 1898), p. 501.

28 Other inquisitions reflect this understanding. For instance, in 1318 Alexander Tothe was delivered to his mother, after an inquisition found that he was not an idiot, because he 'enjoys lucid intervals (*lucidis intervallis*) in the new moon': *CCR Edward II. [Vol. 3]: 1318-1323* (London: HMSO, 1895), p. 22.

The disconnect between the escheator's ultimate findings, and his description of William's symptoms suggests then that he was aware that William met the legal criteria for lunacy more than idiocy, but was willing to misrepresent his condition in order to ensure that the king's faithful servant could receive his wardship. For, had the escheator found that William was a lunatic rather than an idiot, the Crown could not have granted his wardship to Adam, since it was required to protect, but unable to profit from, the lands of people suffering from temporary mental illness. By identifying William as an idiot however, the Crown was able to grant his land and the profits it produced to anyone it pleased.<sup>29</sup> William's inquisition thus speaks to the royal courts' willingness to stretch the definition of idiocy to accommodate the desires of the Crown and its allies. With this in mind, let us now return to what happened after Emma brought her appeal.

The Crown seems to have taken Emma's troubling accusations against the escheator seriously. On 8 December, Chancery issued a writ ordering Philip to bring Emma into Chancery at Westminster on the 5 January so that she could be 'examined before the council and dealt with according to law and reason', as the king himself had been informed that she was 'of sound mind'.<sup>30</sup> In many respects, this was a remarkable request. Bishop's Lynn lies ninety-seven miles north of London. Even if Philip had been able to travel by river, a trip of this distance would have been a financial burden, especially relative to the modest amount of money to be gained from Emma's estate. It is also astounding that a case such as Emma's would have attracted so much attention from Chancery. Philip did not produce Emma, however. Rather, he endorsed and returned the writ claiming that he could not comply with the court's order because Emma had never been delivered to him.<sup>31</sup>

At this point, the Crown seems to have lost sympathy for Emma's appeal. In a writ issued on 31 January to Henry Betle, Lawrence de Elyngham, John Paxman and Robert Brisley (the mayor of Lynn, the man with whom Emma allegedly lived, and the executors of Emma's husband's will, respectively), Chancery reiterated the escheator's initial findings concerning Emma's mental state. The writ then ordered them to deliver Emma and her goods to Philip without delay under the penalty of a fine of £300, or present Chancery with good case for not complying by Monday of the second week in Lent.<sup>32</sup> This exorbitant sum warrants comment. As noted, Emma's property was not worth much. Between her tenement in Jeweslane worth two marks yearly, the messuage in Websterwe worth twenty shillings yearly, and the tenement in Wyngate worth twenty shillings yearly, her entire estate yielded less than four pounds in yearly rents. The fact that the Crown threatened the

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29 See note 6 above.

30 TNA, C145/228/10.

31 TNA, C145/228/10.

32 TNA, C145/228/10.

town with a penalty of more than seventy-five times this amount suggests that the case was quickly spiraling out of control. It had become a space in which pre-existing tensions between the Burgesses of Lynn and royal authority could be played out, and Emma, as we shall soon see, was caught in the crossfire.

Bishop's Lynn, which is now known as King's Lynn, was a chartered borough, and thus enjoyed rights and privileges typically reserved for the Crown. These included the right to hold markets, elect representatives, collect taxes from its citizens, and administer its own affairs in most judicial matters. Lynn had begun as a small settlement on the manor of Gayswood, settled at the mouth of the great river Ouse and nestled between the sandy banks of the Purfleet and the Mill Fleet. By the time of Emma's inquisition, however, it had swelled considerably in both size and importance as the result of rapid economic development. Lynn had long prospered because the Purfleet and the Mill Fleet were deep enough to accommodate ships, and the salt marshes that formed on their banks provided Lynn's residents with a valuable commodity. Thanks in part to its position between the rivers, Lynn had become the third largest port in England by the mid-fourteenth century.<sup>33</sup> Nevertheless, by the time of Emma's inquisition a number of economic factors had strained its relationship with the Crown.

The Crown needed to raise taxes to support its military actions abroad, which had placed a large financial burden on the town during the 1360s and 70s, at exactly the wrong time. For although Lynn appeared prosperous, trouble was brewing on the horizon; East Anglia as a whole had reached the limits of its agricultural expansion during these years, and Lynn was beginning to see competition from market towns that had been formed in response to the need to find new sources of income. Moreover, viable long distance trade was now a reality, bringing to market cheaper salt from Portugal and Spain. Finally, Hanse towns were beginning to dominate trade in the North Sea. It should not be surprising then, that increasing taxation from the Crown created tension between town officials and royal authority. Popular resistance to the Crown's intrusion into Lynn's self-governance seems to have reached a boiling point in 1374 when Lynn's burgesses passed an ordinance that stated that 'if anyone speaks ill of tax-collectors because of the tax assessed on them, or arranges anything to happen whereby they are harmed or obstructed, he shall pay twice as much tax that year'.<sup>34</sup>

33 Background on King's Lynn can be found in *Red Register of King's Lynn*, ii, pp. i-xxiii; Michael D. Myers, "A Fictional-True Self: Margery Kempe and the Social Reality of the Merchant Elite of King's Lynn," *Albion: A Quarterly Journal Concerned with British Studies*, 31 (1999): 377-394; Dorothy M. Owen, *The Making of King's Lynn, A Documentary Survey*, British Academy Records of Social and Economic History, new series 9 (London: OUP for The British Academy, 1984); Henry J. Hillen, *The History of the Borough of King's Lynn* vol. 1 (Norwich: East of England Newspaper Co., Ltd, 1907). Stephen Alsford, 'History of Medieval Lynn', <<http://users.trytel.com/~tristan/towns/lynn1.html>> also contains a wealth of information about Lynn and other late medieval towns.

34 *Red Register of King's Lynn*, ii, p. 114.

Henry Betle's response to Chancery's demand that he surrender Emma to Philip betrays these tensions. Rather than producing Emma as per the writ's request, Henry and the others named attempted to furnish reasonable cause for their unwillingness to hand her over. In the letter sent to Chancery shortly after the receipt of the writ issued on 31 January, they justified their disobedience by arguing, among other things, that the case was outside the Crown's jurisdiction, and framed their initial decision to hide Emma in the context of local rights to self-rule. After claiming that that they did not know where Emma was, and that more importantly, she had no land or goods that could be delivered to Philip, they argued the following:

The present king and his progenitors have made our town of Lenn a free borough by their charters and have granted firmly and permanently to the mayor and burgesses that they may have and use all such liberties and customs as the city of Oxford uses. On this point, Henry Betle, mayor of Lenn, though unworthy signifies that if any burgess or the wife, son or daughter of a burgess within the town is an idiot from birth or from a certain time, or is overwhelmed by disease of old age, or is of unsound mind so as to be unable to manage himself, his lands or chattels, the mayor and aldermen for the time being, together with the sufferer's nearest friends and relations, have been wont since time immemorial to provide for his management, guardianship and maintenance, without intervention of the king, his progenitors or any person within the liberties of the town of Lenn.<sup>35</sup>

Wendy Turner has used the fact that Henry and the others represented in this letter framed their decision to hide Emma in the context of local rights to self rule, as evidence that chartered boroughs would often disregard the Crown's custodial rights over its mentally incompetent subjects if they stood to lose enough income from their lands passing into royal custody.<sup>36</sup> However, there is reason to suspect that Henry and the others who hid Emma were driven by more than material concerns, particularly given the relatively modest value of Emma's estate. For other features of Henry's response to the Crown suggest that his rejection of the escheator's initial findings and subsequent refusal to obey the Crown's demands were not only about a clash between local government and central authority over the limits of royal jurisdiction. Rather, Henry's resistance speaks to a rejection of the criteria the Crown used to assess Emma's alleged idiocy, and disagreement over who had the right to define the boundaries of reason.

Before making the argument cited above, Henry and the others represented in the letter took issue with the escheator's initial findings. Emma, they claimed, 'was not an

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35 TNA, C145/228/10.

36 Turner, 'Town and Country', pp. 31-35.

idiot, but of sound mind, knowing good from evil and evil from good, and enjoys lucid intervals'.<sup>37</sup> This claim is remarkable, because in making it Henry and the others referred to an older understanding of mental competency that had been used in inquisitions involving matters of criminal insanity for more than a century before Emma's encounter with the law. Before the royal courts began investigating allegations of idiocy during the late thirteenth century, mentally incompetent individuals primarily came to courts' attention when the question arose of whether they had been capable of rational deliberation at the time they committed a crime. A finding of insanity in these cases had the potential to free a person from being outlawed or worse, and to prevent the disinheritance of their heirs in cases of suicides. For instance, in a fairly representative case that took place in 1278 officials acting on the orders of Chancery sought to determine whether Hugh de Mysyn of Selverton had hanged his daughter Cecily 'feloniously or in frenzy'. The commission duly determined that he did so while in a state of frenzy and was thus not culpable.

The fact that mentally incompetent individuals were thought to lack awareness of the moral value of their actions provided the legal grounding for these inquisitions. Henry's claim that Emma was 'of sound mind, because she knew good from evil and evil from good', seems to reflect this understanding of mental competency. Moreover, he undoubtedly emphasized that Emma enjoyed lucid intervals in order to reference the legal definition of insanity; for the presence of lucid intervals was the main criterion by which the law distinguished the *non compos mentis* — from whose land the Crown could not take profits — from the natural fools and idiots.<sup>38</sup> The language used in Henry's letter then, suggests that he was familiar with the legal distinction between idiocy and insanity. It also suggests that he may have still seen mental disorder as an impairment of moral reasoning rather than intellectual ability.<sup>39</sup> The stark contrast between the criteria used to assess Emma's mental competence and those articulated in Henry's letter brings this into focus.

The defense put forth in Henry's letter seems to have only provoked the Crown to step up its response. On 24 June 1383, a writ of *non omittas* was sent to the sheriff of Norfolk, which ordered him to take Robert, Lawrence and John Lok into custody, and to bring them into Chancery at Westminster to answer for disregarding the previous writ. The sheriff, however, was unable to produce them, and noted in his reply to the writ that while John Lok had appointed John Mareschall, Lawrence Tussebu and James Bilynford as his attorneys,

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37 TNA, C145/228/10.

38 See note 6 above.

39 Interestingly enough, Henry was not the only person in the records of the royal courts who characterized idiocy as a disorder impacting one's moral reasoning rather than a deficit of pragmatic skills. In 1404, a relative of Christina, daughter of Thomas Gologreve alleged that she was an 'idiot from birth, unable to distinguish good from evil and evil from good', in hopes of gaining access to her estate. *CIPM Vol. XVIII, 1-6 Henry IV (1399-1405)* (London: HMSO, 1987), no. 1012.

Lawrence and Robert were nowhere to be found.<sup>40</sup> By this point, Emma had become a secondary character in the story being told by the legal records; however her tale had not reached its end. As noted, Emma was eventually re-examined in July of 1383 by a jury of three men. During the inquisition, she was asked among other things, whether she had children, to which she replied that she had a son, but did not know his name; what day of the month Friday had fallen upon, which she did not know; how many days there were in a week, to which she answered seven, but she could not name them; 'how many shillings were in forty pence', to which she replied she did not know; and 'whether she would rather have twenty silver groats than forty pence', to which she replied that they were of the same value.<sup>41</sup> Unsatisfied with these answers, the jury found Emma to be an idiot, and entrusted her to Phillip's custody. Sadly, the records of an inquisition *post mortem* held two years later suggest that Emma died shortly after she entered into his custody.<sup>42</sup>

We have now seen that the process through which Emma was ruled an idiot, was fiercely contentious, and by no means transparent. Although some of the questions by which Emma was assessed were clearly devised to test her memory, others — like those involving shillings and groats — focused on whether she was capable of acting in her economic self-interest. They were thus a far cry from the criteria for mental competency that Henry Betle referenced in his letter to Chancery. Moreover, they do not reflect descriptions of mental disorder put forth in contemporary medical writing, or any procedural forms described by medieval jurists, with perhaps one exception.<sup>43</sup> The late-twelfth-century legal treatise *Glanvill* held that while the age of legal majority for a knight was set at twenty-one, and a stockman at fifteen, the son of a burgess would only reach the age of majority 'when he has discretion to count money and measure cloth in like manner to manage his father's other concerns'.<sup>44</sup> Although *Glanvill* says nothing about the rights of natural fools and idiots, at least one fourteenth-century escheator seems to have referenced these criteria when examining an alleged idiot: in 1353 Thomas de Grenestede was found to be of 'good mind and sane memory', when the escheator sent to examine him found him 'counting money, measuring cloth, and doing all other things'.<sup>45</sup> Interestingly, the ability to measure cloth was also cited as a marker of mental competence in a sixteenth-century legal

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40 TNA, C145/228/10.

41 TNA, C145/228/10.

42 TNA, C136/43/8.

43 See note 4 above.

44 Ranulph de Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. and trans. by G. D. G. Hall (Oxford: OUP, 1965), 82.

45 TNA, C135/63/8.



dictionary, which held that if one could 'measure an elle of cloth, or name the daies of the week [...] then such a one is noe Ideot naturallye'.<sup>46</sup>

Burgesses of market towns and free boroughs like Lynn came from commercial backgrounds, and it thus makes sense that the ability to count coins and measure cloth would be used as measures of their majority as these tasks were essential to their livelihood.<sup>47</sup> However, the fact that these tests came to be used in cases involving heiresses, widows, rural landholders, and people whose particular professions would not require them, suggests that a set of skills that had once marked participation in an elite class was in the process of becoming a prerequisite for mental competency. Supporting this interpretation, by the seventeenth century, alleged idiots from all classes were routinely asked to appraise the value of coins in hearings administered by the Court of Wards. For instance, in 1615 Thomas Pope, an Elizabethan actor, was found to be of sound mind after he demonstrated that he was, 'very well able to discern and know the differences of all pieces of silver of the Queen's coin and the perfect value of them from xiid to a half-penny'.<sup>48</sup>

Although England's economy was contracting during the late fourteenth century, one might paradoxically argue that Emma lived at a time when the effects of the rapid commercialisation over the previous century were just beginning to be felt by English society as a whole. Specifically, although the thirteenth century witnessed the rise of towns and markets, expansion of long distance trade, and increases in the quantity of money in circulation, it may not have been until the fourteenth century that the growth of commercial activity outpaced that of population. As a result, it was not until 1300-1500 that ordinary people became more dependent on money as a medium of day-to-day exchange, and merchants emerged as a powerful socio-political class.<sup>49</sup> The popularization of diagnostic tests once reserved only for burgesses and other members of the upper classes may reflect these developments, and ultimately suggest that the values of people who were immersed in a commercial economy were entering mainstream culture, and reshaping the way mental competency was both defined and assessed. Lending support to this interpretation, Philip, the escheator responsible for Emma's initial assessment, and Henry Betle and his companions, were all involved in trade in some form or another.

46 Rastell, *Exposition of Certain Difficulte and Obscure Words and Termes*, quoted in McDonagh, *Idiocy: A Cultural History*, p. 86.

47 *CPR Richard II.; 2, A.D. 1381-1385* (London: HMSO, 1897), p. 212.

48 Neugebauer, 'Mental Handicap in Medieval and Early Modern England', p. 29.

49 Richard H. Britnell, *The Commercialisation of English Society, 1000-1500*, second edn (Manchester: Manchester University Press, 1996), p. xiv. Britnell suggests that while commercial activity grew more rapidly in a general sense during the thirteenth century, it began to grow faster than population during the fourteenth, and thus played a considerable role in the profound social changes that took place between 1300 and 1500.



Thus, the tests used in Emma's inquisition perhaps were not a sign of medieval courts' rationality, but a reflection of the cultural context in which they emerged. The fact that they endured in legal thought and practice centuries after this context had been forgotten then, does not suggest that the medieval courts were ahead of their time, but instead that later understandings of mental competency may have stranger origins than we previously imagined.

#### Accounting for Rationality with Imaginary Numbers

This becomes clearer when we consider the extent to which a person in Emma's position would have been able to answer the questions she was asked during her examination. At first glance, the ability to count coins, name the days of the week, and count backwards to figure out what day in the month some past Friday had fallen upon, seem like fairly objective measures of mental competence. Nevertheless many of the questions royal officials asked Emma during her examination were not things someone with her background and experiences would necessarily have had reason to know. It seems striking that Emma could not name the days of the week or state her exact age. Robert Bartlett however, has demonstrated that medieval estimates of age were often unreliable, because in a world without clocks, people did not measure time by the passage of days or weeks, but by significant events, like the loss of an estate, the beginning of a marriage, or a child's death.<sup>50</sup> Thus, the fact that Emma could not answer these questions may simply indicate that her perception of time was governed by the Church's calendar of holy days and the changing of the seasons, rather than the mechanical clock.<sup>51</sup>

The questions about shillings, pence, and groats, are even more noteworthy in this respect. There are twelve pence to a shilling, and thus three and one third shillings in forty pence. The groat, which was first minted in England in 1341, was technically worth four pence, although it never actually contained enough silver to equal four pennyweights, and

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50 Robert Bartlett, *The Hanged Man: A Story of Miracle, Memory and Colonialism in the Middle Ages*, (Princeton, NJ: Princeton University Press, 2004), pp. 114-15.

51 For more on the different ways of perceiving time in the later Middle Ages, see Jacques Le Goff, 'Merchant's Time and Church's Time in the Middle Ages', in Le Goff, *Time, Work & Culture in the Middle Ages*, trans. by Arthur Goldhammer (Chicago: University of Chicago Press, 1980). Clocks only began to appear in medieval towns during the late fourteenth century. An entry dated 8 December 1372 in the *Red Register of King's Lynn* noted that burgesses who arrived at the session of the Mayor and Commonality after *Le Clok* struck ten would have to pay a fine of four pence. Lynn then, was one of the first English towns to install a clock in the borough center. Nevertheless, Emma, who was elderly at the time of her inquisitions, would have lived most of her life without the tolling bells to break up her day, and as a result may have never fully internalized this new system of time keeping. (*Red Register of King's Lynn*, ii, p. 109.)

became progressively lighter over the course of the fourteenth and fifteenth centuries.<sup>52</sup> Nevertheless, assuming one ignored these discrepancies (which it may have been hard to do in a town like Bishop's Lynn, where money would have needed to be valued against the currency brought in by foreign traders), it should have been obvious that twenty groats were worth twice as much as forty pence, right?

If you did not grow up in England prior to the shift to decimal money, you are probably beginning to feel sympathy for Emma. Of course, Emma had the advantage of living at a time when these coins were supposedly in circulation. Nevertheless, I would like to argue that her inability to correctly answer these questions was not necessarily a symptom of intellectual disability. Instead, it was likely indicative of the fact that few people who were not significantly involved in commercial activity possessed the numerical skills and familiarity with currency necessary to answer these apparently simple questions.

Despite the fact that rapid growth of long distance trade during the later Middle Ages would have made the ability to add and subtract sums of money vital to successful participation in the new economy, several historians have speculated that Western Europe was largely innumerate until the sixteenth or seventeenth century.<sup>53</sup> Moreover, some of the coins that Emma was asked to value were not even in circulation at the time of her inquisition. In 1383, shillings were what economic historians refer to as 'ghost moneys' or 'money of account', fictitious denominations that existed solely for the purpose of reckoning, in the minds of merchants, and the registers of their account books.<sup>54</sup> The shilling was not minted for the first time until 1481, and groats only circulated in England to a very limited extent at the time of Emma's examination.<sup>55</sup>

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52 The English groat should have contained four penny weights, or ninety-six grains of silver; however even when it was first issued, it only contained eighty-nine grains. It only got lighter over time; during the reign of Edward III it had been reduced to seventy-two grains, it fell to sixty grains under Henry IV, and forty-eight grains under Edward IV. Despite these devaluations, the Crown insisted that its value relative to the shilling and pound remain unchanged.

53 Keith Thomas, 'Numeracy in Early Modern England: The Prothero Lecture', *Transactions of the Royal Historical Society*, 37 (1987): 103-132. Patricia Cline Cohen, *A Calculating People: The Spread of Numeracy in Early America* (London: Routledge, 1999). Theodore M. Porter, *Trust in Numbers: The Pursuit of Objectivity in Science of Public Life* (Princeton: Princeton University Press, 1996).

54 Peter Spufford, 'Money of Account', in Spufford, *Money and its Uses in Medieval Europe* (Cambridge: CUP, 1998), pp. 411-14.

55 Thomas J. Sargent and François R. Velde, *The Big Problem of Small Change* (Princeton: Princeton University Press, 2002), pp. 126-138. Also, see James L. Bolton, 'What is Money? What is a Money Economy? When did a Money Economy Emerge in Medieval England', in *Medieval Money Matters*, ed. by Diana Wood (Oxford: Oxbow Books, 2004), pp. 1-16 (at p. 5).

Based upon this, it seems more reasonable that Emma would have been stumped by questions involving shillings, a denomination of money that she had never seen or held. While the English groat was issued successfully in 1341 after a failed issue in 1279, it is likely that Emma, along with anyone else with little involvement in commercial activity, would have had only slightly more experience with groats than shillings. In the late fourteenth and early fifteenth centuries, Western Europe experienced a 'bullion crisis' or 'silver famine' that severely diminished the amount of currency in circulation. Parliament held an inquiry in 1381-2 into 'why no gold and silver is coming into England', and the King's Chancellor lamented in 1385 that since silver was now valued more highly everywhere else than in England, it was 'craftily withdrawn from the realm and daily carried away'.<sup>56</sup> On account of these developments, it is unlikely that most people would have used groats as a currency of day-to-day exchange.<sup>57</sup>

Further complicating the matter, the Crown's response to the bullion crisis created uncertainty about the purchasing power of coins. During the mid-to-late fourteenth century, the Crown strategically decreased the weight of silver in its newly minted coins, and boroughs often debased the coins that reached their coffers. Fears about the illegal debasement of coins already in circulation created widespread doubt about the true value of money, to which the Crown responded by instituting Draconian punishments for coin clipping.<sup>58</sup> During her examination, Emma had erroneously claimed that twenty groats were worth the same as forty pence. Interestingly enough, due to these strategic debasements, the coins would have been much closer to each other in real value at the time of Emma's interactions with the courts, than they had been at the time of the groat's first issue. If each groat contained sixty grains of silver at most by the 1380s, twenty groats would have contained 1200 grains of silver, while forty pennies would have contained 960 grains. While twenty groats still would have been worth more than forty pennies, these fluctuations in value certainly would have complicated the question, had Emma been aware of them. Moreover, the groat was only introduced in England after a French groat — which had a different value — had been in circulation for a few decades. Given that Lynn was an important trading center, it is not unlikely that the French groat would have been in circulation there as well.

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56 John Day, *The Medieval Market Economy* (Oxford: Blackwell, 1987), pp. 16-17.

57 Spufford, *Money and its Uses*, pp. 319-63. Spufford hypothesizes that the half groat was used for day-to-day exchange, following wage inflation in the wake of the great plague (Spufford, *Money and its Uses*, pp. 234-35). He departs, however, from the views of most other economic historians, who believe that the groat and half groat were minted primarily for long distance trade.

58 Bolton, 'What is Money?', p. 9. Coin clipping was reclassified as a crime of treason during this period and thus became one of the only crimes punishable by drawing and quartering. By guaranteeing the weight and measure of coins, the Crown reinforced its own authority by designating itself as the universal arbitrator of value at a time of uncertainty. Accordingly, doubts about the value of coins would have undermined this authority.

The money that Emma was asked to compare then, was hard to come by, difficult to value, and people with little involvement in trade would have had few reasons to use it. Rather than being a neutral medium of exchange and a perfect vessel by which to hold value, money was both subjective and impersonal, and would have added a layer of confusion rather than clarity to transactions. This makes the fact that the Crown began to use the ability to correctly value, add and subtract sums of money as a marker of mental competence at a time when there was great uncertainty about its value perplexing, unless the people who introduced these criteria found money less mysterious than most.

It is ultimately impossible to know whether Emma, and the hundreds of other people classified as 'idiots' during the late Middle Ages, had minds that would fit the modern criteria for intellectual disability. Nevertheless, this is the context in which the definition of idiocy that Elliotson so objected to emerged.

#### Afterword

Let us return now to John Elliotson. Rereading Elliotson's complaint that psychiatrists had begun to rely on the legal precept that:

The individual, in order to be constituted an idiot, must be unable to number to twenty, or to tell his age, or to answer any common question; by which it may plainly appear, that the person has not reason sufficient to discern what is for his advantage or disadvantage.

It is clear that a relationship exists between the legal and medical criteria for idiocy in the nineteenth century, and the questions that royal officials posed to Emma during her inquisition more than four hundred years prior.<sup>59</sup> Conforming to Elliotson's characterization of his colleagues as slavish disciples of the common law, we can see traces of this relationship in their writing as well. Nearly every case study cited in *A Manual for the Classification of the Feeble Minded, Imbecile & Idiotic*, a diagnostic guide published in 1866 for use in clinics and medical schools, highlighted so-called idiots' inability to count money.<sup>60</sup> Like Emma over four hundred years earlier, one 'idiot' allegedly had 'little memory and attention', and thus 'did not know the days of the week and could not count'. Another, who could not 'recall the time when, or distinguish between yesterday and a month ago, or a year since', had only 'a slight idea of the value of coins or money'; and another, who was 'born in possession of all his faculties', but robbed of them by epilepsy,

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59 Elliotson, *The Principles and Practice of Medicine*, p. 599.

60 P. Martin Duncan, M.B. LOND., F.G.S., F.A.S.L. and William Millard, *A Manual for the Classification, Training, and Education of the Feeble Minded, Imbecile & Idiotic* (London: Longmans, Green, and Co., 1866), pp. 40-54. Duncan was the honorary consulting surgeon to the Eastern Counties asylum for idiots and imbeciles, while Millard was the superintendent of the Eastern Counties asylum for idiots and imbeciles.

had 'a faint idea of the value of money', but his 'arithmetical powers [were] few and ill developed'. In slight contrast, a fifteen-year-old girl in the asylum did 'not know the idea of money, [but had] an idea of multiplication, [knew] her own things, and [could] compare'.<sup>61</sup>

It is not surprising that the practices of the late-medieval royal courts were eventually codified. What *is* noteworthy about Elliotson's complaint, however, is what it implies about the relationship between legal and medical understandings of mental incompetency. The fact that nineteenth-century psychiatrists had evidently accepted an understanding of idiocy that originated in the practices of the fourteenth-century royal courts, suggests that medieval law's understanding of 'idiocy'—itself a messy product of the cultural context in which it emerged—did not remain confined to law and administration. Rather, what originated as a narrow legal concept eventually came to inform how medical practitioners thought about, defined and treated what we might think of today as intellectual disability. Where areas of affinity exist between law and medicine, we tend to think that it is medicine that informs law, because all other interpretations are at odds with the idea that medical knowledge is trans-historical and natural. These connections then, highlight the extensive reach of law's dominion, and ultimately point to one of the stranger ways that medieval law informed culture beyond the courtroom.

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61 Indeed, we can even find vestiges of the medieval past in twentieth-century debates about immigration. In 1910 for instance, a report to congress on the state of immigration at Ellis Island noted that 'Many immigrants, aside from being illiterate, are ignorant beyond belief. Often they do not know the days of the week, the months of the year, their own ages, or the name of any country in Europe outside of their own'.